

Appeal from a decision of the Carson City (Nevada) District Office, Bureau of Land Management, to offer mineral materials for competitive sale. N-60222.

Affirmed.

1. Materials Act

BLM is authorized to dispose of mineral materials including common varieties of sand and gravel in the public lands of the United States, if the disposal of these materials is not expressly prohibited by the laws of the United States and would not be detrimental to the public interest. Approval or denial of an application for a mineral materials sale rests within BLM's discretionary authority. Despite the existence of some adverse impacts on the surrounding community, BLM's decision to issue an extension to an existing materials sales contract is properly affirmed where BLM's record shows that its decision would not be detrimental to the public interest, considered as a whole; where BLM ensured that its decision would be well informed by involving the local civic association, which agreed that the decision was in the public interest; and where appellant has not shown that BLM abused its authority in issuing it.

2. Environmental Quality: Environmental Statements--Materials Act--National Environmental Policy Act of 1969: Environmental Statements--National Environmental Policy Act of 1969: Finding of No Significant Impact

A BLM decision record approving the issuance of a contract for the sale of sand and gravel from Federal lands and finding no significant impact from that sale will be affirmed where BLM has taken a hard look at the environmental consequences of the sale and there is no evidence that BLM failed

to consider adequately a substantial environmental problem of material significance. Where an environmental assessment is prepared fully and frankly disclosing the presence of some negative environmental consequences (adverse effects on visual resources) from the continuation of gravel/aggregate mining operations, and those consequences are disclosed to concerned parties in the surrounding community, BLM has satisfied that requirement.

APPEARANCES: Dan C. Herman, pro se; Pierre A. Hascheff, Esq., for Rocky Ridge, Inc.

OPINION BY ADMINISTRATIVE JUDGE HUGHES

Dan C. Herman has appealed from the July 14, 1997, decision of the Carson City (Nevada) District Office, Bureau of Land Management (BLM), to offer mineral materials (aggregate) for competitive sale. The decision took the form of a Finding of No Significant Impact (FONSI) and a Record of Decision (RD) selecting the "proposed action, in part."

On August 15, 1995, Rocky Ridge, Inc. (Rocky Ridge), filed a request with BLM for a new material sale for 1 million tons on existing contract N-48820. The proposal involved extraction of 1 million tons of "select rock material" per year by open pit methods from Federal lands in sec. 15, T. 21 N., R. 20 E., Mount Diablo Meridian, in the Spanish Springs Valley north of Sparks, Nevada. On September 18, 1995, BLM advised Rocky Ridge that its request had been serialized as N-60222 and that, before a sale could be held and a new contract issued, a mining and reclamation plan, an environmental assessment (EA), and a mineral material appraisal report were required. BLM noted that a contract of 1 million tons would last less than 2 years and suggested that Rocky Ridge increase the tonnage requested to meet its needs for at least 5 years or until the resource was depleted. BLM advised that the bond amount would be set at either 20 percent of the total contract value or 100 percent of the reclamation costs identified in the reclamation plan, whichever was greater.

On January 25, 1996, BLM announced to the public that Rocky Ridge would be preparing an EA for a proposed continuation of its aggregate quarry. ^{1/} It advised that the proposal would result in the removal of

^{1/} Copies of the announcement and requests for comments were sent to the Washoe County Department of Comprehensive Planning; the City of Reno; the City of Reno Parks Division; the Pyramid Lake Paiute Tribe; the Truckee Meadows Regional Planning Agency; the City of Sparks Planning Office; the Spanish Springs Citizens Advisory Board (SSCAB); and the Friends of Pyramid Lake, as well as to individuals. BLM sent a second copy on Mar. 4, 1996, to the Washoe County Department of Comprehensive Planning requesting comments.

approximately 30 million tons of construction materials from a hillside on the west side of Spanish Springs Valley over a period of up to 30 years. BLM also advised that the crushing and screening plants and stackers, and an asphalt concrete manufacturing plant would continue to operate at the site, and that the current project had all necessary State, local, and Federal permits. It indicated that no new access roads or increases in production rates were anticipated, and that existing and proposed areas of disturbance would be reclaimed. BLM invited comments and suggestions on the scope of the EA.

In October 1996, AGRA Earth & Environmental (AGRA) submitted a proposed mining plan to BLM on behalf of Rocky Ridge. The plan called for extraction of approximately 10 million tons of material over a period of approximately 10 years. The proposal called for mining on the south side of Stormy Canyon, across the Stormy Creek Canyon drainage to the south of the processing plant. (Proposed Mining Plan, Fig. 2.) AGRA indicated that mining would take place by ripping with bulldozers, that the cut face would be mined in benches, and that the overall slope during mining would be approximately 1.5h:1v. It indicated that, at the cessation of operations, the slope would be less steep: 3h:1v for the east facing, and 2h:1v for the north and south facings. ^{2/}

On February 4, 1997, appellant Herman provided BLM with his comments on the application. ^{3/} He urged BLM to solicit public comments and opinions from the citizens of Spanish Springs by convening a public hearing

^{2/} AGRA also enclosed information showing the scope of two more phases for development after completion of the 10-year project it outlined in detail.

^{3/} During this period, additional comments were received from other parties. On Feb. 9, 1997, BLM received a letter from the Washoe County Department of Comprehensive Planning, noting that "the proposed expansion of the Rocky Ridge aggregate site is more closely tied to [the County's] Growth Management Program because of existing and future land use issues and to the Department of Development Review because they would be the agency processing any application for an amendment to Rocky Ridge's Special Use Permit." Noting that no application of such amendment had been filed, it stated that it would be premature to state its position on the matter. It stressed the importance of contacting the SSCAB, among other procedural steps involving local agencies, prior to commenting. On Feb. 16, 1997, Rocky Ridge communicated to the Washoe County Department of Development Review concerning whether a new or amended County special use permit would be required.

BLM also received a letter from the owners of a competing aggregate operation urging BLM to treat upcoming negotiations with it "with the same impartial consideration" provided to Rocky Ridge.

BLM received a comment stating that the existing quarry operation had "already created a serious visual impact" and that the "inclusion of an additional 66 acres" would "magnify the problem tenfold," and suggesting the preparation of a full environmental impact statement (EIS).

before the SSCAB before awarding any new contract. He stated his belief that the current operation was in violation of the terms of the contract (N-48820) awarded in 1992, in that Rocky Ridge exceeded the maximum anticipated stockpile of 50,000 tons as stated in Par. A4 of section 12, and the Stormy Canyon road was blocked by the operations at Rocky Ridge. He indicated that Rocky Ridge had increased the scarring of the hillside greatly over the last 6 months and that such scarring was visible from most of Spanish Springs and especially from Pyramid Highway, which (he asserted) has been designated as a scenic corridor. He questioned whether Rocky Ridge's recent excavations at the base of Stormy Canyon and its failure to paint its water tower with a nonreflective, neutral color were in compliance with the existing contract.

BLM's record also contains a report from the State of Nevada, Division of Environmental Protection, Bureau of Water Pollution Control, indicating that the site had been inspected at Herman's request in July 1996 and February 1997 to determine if it was contributing to arsenic contamination of local water. The inspections found nothing linking the high arsenic levels to Rocky Ridge's operations, but concluded that they were naturally-occurring and were not likely to affect the water table. 4/

A draft EA was subsequently submitted to BLM, which notified AGRA on February 20, 1997, that numerous changes were required.

BLM responded to Herman's comments on February 21, 1997, noting that its EA for this proposal would be completed soon and made available for a 30-day public review period and would contain the new mining plan

4/ The report states:

"We took another look at the gravel wash water system. The water flows to the pond area via a ditch and enters a 'delta' area which is surrounded by an earthen dike. Nearly all of the sediment is deposited in this area. The water works [its] way northward and then turns west. It then flows in a southerly direction into the ponds which are about 15 feet deep. Water is taken out of the south end of the pond and used for dust control and reused to wash gravel. No waste water leaves the property via the surface. A review of a well log (attached) in Bone Yard Flat reveals a clay layer from 20 to 50 feet which makes percolation to the water table inconceivable.

"I spoke with Armando Robledo of the USGS [U.S. Geological Survey] about Bone Yard Flat. He conducted a study on the entire Spanish Springs Valley which is just about to go to publication. He stated that a geologic report of the area shows that there is some naturally occurring arsenic in the rock formations of the area and that the rock crushing activities would make it more readily available. He concurred that percolation to the water table in Bone Yard Flat would not occur, especially in light of the yearly evaporation rate of 48 inches." (Report at 2.)

with appropriate mitigation and stipulations. BLM conceded that terms of its previous agreement with Rocky Ridge had not been strictly enforced because some of the offending activities were occurring on privately-owned lands. BLM stated as follows concerning visual impacts from the project:

We also agree that the pit in [its] present form creates visual impacts for residents in Spanish Springs Valley. When the pit was initially established twelve years ago, it was not considered to be a significant impact to the environment due to [its] distance from residential areas. It was approved based upon the need to provide a source of quality aggregate to the Reno/Sparks community. Prior to establishing the initial sale area, BLM coordinated the proposal with Washoe County. The County issued a Special Use Permit in 1984 authorizing the operation. It should also be noted that the new contract will include a reclamation plan that provides for the contouring and revegetation of the disturbed surface after the material is exhausted. BLM also retains a reclamation and performance bond in the event the operator defaults on the terms of the contract.

As to the issue of blockage of Stormy Canyon, BLM stated:

As you are aware, the existing mineral material sales contract provides for unrestricted access on public lands through Stormy Canyon. We understand that there has been problems in the past with the operator either constructing berms or otherwise altering the drainage channel that has also had an effect on access. The operator claims these actions were necessary to protect the operation from storm water damage. Personnel from this office are currently looking into the situation and we expect to have a solution to the problem before a new sale is offered. While the BLM has no direct control over restrictions the operator imposes on the adjoining private property, we have and will support Washoe County in any legal actions to preserve access to public land.

As to arsenic levels, BLM stated:

Our office has been in contact with the Nevada Department of Environmental Protection (NDEP) regarding the high levels of arsenic found in the vicinity of the aggregate pit. NDEP initially determined that the wash water leaving the plant facilities was abnormally high in arsenic. However, upon further investigation, it was found that the arsenic levels dropped dramatically after the wash water left the settling pond. This indicates that the arsenic is tied up in the fine particulate matter that remains in the settling pond. NDEP also informed us that the well that the operator is pumping from, as well as other wells in the area, are naturally high

in both arsenic and nitrates. Further, the amount of clay in Boneyard Flat, and the high rate of evaporation found in this climate, prevents any discharge or storm water from infiltrating to the ground water.

On February 29, 1996, the SSCAB filed its initial comments on the proposal, advising BLM that "precautions needed to be taken prior to any decisions being made," and that citizens in Spanish Springs Valley have opposed the plan for several reasons: air pollution and offensive odor caused by the asphalt facility and extending north beyond Palomino Valley; hazardous volume and speed of truck traffic; effects on existing and proposed residential development; and additional destruction to scenic beauty, vegetation, and wildlife habitat. The SSCAB also recommended that a full EIS be completed. As discussed below, SSCAB's opposition to the proposal was later dropped, with the proviso that BLM impose certain protective stipulations.

On March 4, 1996, BLM requested comments on the proposed expansion from the Growth Management Program Director, Washoe County Department of Comprehensive Planning, pursuant to a Memorandum of Understanding between Washoe County and BLM.

BLM's draft EA, RD, and FONSI were completed in April 1997 and copies were distributed to interested parties (including Herman and the SSCAB) for comment on April 21, 1997. The EA provided that the Rocky Ridge site must comply with NDEP regulations regarding stormwater control and that an application for a general stormwater permit for stormwater drainage (including a stormwater pollution prevention plan) was being developed and submitted to NDEP. BLM noted that Washoe County issued Rocky Ridge a change of land use district case number for both the current operation and the proposed action and an air pollution emission source permit, and that the aggregate quarry was presently "in conformance with the Washoe County Comprehensive Plan." (EA at 2.) The EA recognized that "reclamation [5/] is an integral and necessary part of the mining plan," (EA at 2) but that reclamation would not be conducted until the cessation of mining operations (EA at 12), which might be as long as 30 years in the future. 6/ The EA conceded that visual resources had been impacted by the present operation,

5/ "Reclamation" includes establishment of revegetation test plots; stockpiling of topsoil to be used to grow vegetation at the cessation of operations; removal of equipment and temporary structures from the site; removal of berms or flood diversion structures; recontouring disturbed areas to blend in with existing topography; and monitoring of revegetation. (EA at 8.) The EA indicated that steeper slopes in bedrock (above 3h:1v) would not be revegetated. (EA at 12.) Revegetation would be evaluated at the end of 3 years; the reclamation bond would not be released until after revegetation criteria have been met. (EA at 12.)

6/ The EA indicated that "concurrent reclamation would be undertaken" only "at any areas of the mine that are considered finished." (EA at 12.)

such that BLM's Class III Visual Resource Management (VRM) objective 7/ were not being met from three key observation posts (KOP) near the site (EA at 15, 21) and, further, that the "degree of contrast" was predicted to be "moderate to strong for the land features during the life of the operation." (EA at 21.)

The nature of the visual disturbance during the mining operations is described in the EA as follows:

The Proposed Action involves the expansion of mining activities at the aggregate quarry which would predominately result in an enlargement of the area of the existing disturbance. This disturbed area would likely be visible as an area of lighter colored soils, fine texture and higher reflectivity, which would be bounded by an apparent sharp edge between non-vegetated disturbed areas and adjoining vegetated non-disturbed areas. * * * During mining, visual impacts could be minimized by confining work to within the proposed future mining area, using existing roads, and thinning vegetation along the outer margin of the proposed expansion area.

(EA at 22.) At this point, BLM was considering a proposal (later rejected) allowing mining south of Stormy Canyon. The photographs attached to the EA show that the visual impact of the proposal is substantially reduced by disallowing mining in that area, particularly from KOP. See EA Appendix B Photos 1 through 3.

The EA also noted that truck traffic would continue at the rate of approximately 150 round trips per day and that jobs would be maintained at the current level. (EA at 23.) Further, the EA found that the economic impacts of the growth of the surrounding area would include the need to produce aggregate, asphalt, and concrete for construction. A local supply of those materials near to Spanish Springs and the Reno/Sparks metropolitan area was deemed economically advantageous. (EA at 18.)

As to noise from the project, the EA noted that residents living in the Spanish Springs Valley subdivision approximately 1.2 miles south/southeast of the proposed project are the "nearest sensitive noise receivers." The EA contains little analysis of the noise impacts on

7/ The Class III VRM states:

"The objective of this class is to partially retain the existing character of the landscape. The level of change to characteristic landscape should be moderate. Management activities may attract attention but should not dominate the view of the casual observer. Changes should repeat the basic elements found in the predominant natural features of the characteristic landscape."

(EA at 15, quoting BLM Manual Handbook 8431-1 (Jan. 17, 1986).)

these parties, other than to note that they were subject to other sources of noise, including the Reno-Cannon International Airport, vehicle traffic on the Pyramid Lake Highway, and small aircraft traffic using the Spanish Springs Pilot Association Airport. (EA at 19, Figure 1-2.)

As to air quality, the EA noted that there would be new surface disturbance due to continuation and expansion of existing mining, but that "[c]ompliance with the existing operating conditions would minimize fugitive dust from new surface disturbances associated with the Proposed Action." The EA noted, however, that "fugitive dust will increase in proportion with the increased surface disturbance and would occur over a longer time period." (EA at 20.)

On May 11, 1997, in comments addressed both to BLM and to the Washoe County Board of Commissioners, Herman repeated his opposition to the expansion of the Rocky Ridge facility. In his comments to BLM, he stressed that the proposed expansion would result in increased scarring of the hillside visible from the Pyramid Highway and questioned how BLM could approve a plan which admittedly violated BLM's VRM Class III objective. (Herman's May 11, 1997, Comments at 3.) He condemned the plan's failure to require contemporaneous reclamation and asserted that the relying on "natural regeneration" to revegetate the slope would take "hundreds of years." He noted that BLM's visual contrast rating worksheets mention rock face paint, seeming to require its use in order to meet the VRM standard in the long run, but that the EA does not require it. (Comments at 4.) He presented photographs which (he asserts) more accurately represent the visual impact of the Rocky Ridge site than those included by BLM in its EA. (Comments at 4-5, Encl. 1.) He asserted that the amount of the bond required by BLM was inadequate (Comments at 4) and challenged the suitability of allowing operations at the site from 6 a.m. to midnight, noting that the noise would be an annoyance to homes built close to the facility. (Comments at 5.) He concluded by suggesting that scarring of the hillside be limited to the existing disturbance, and that mining take place on the side of the ridge away from the highway.

In his comments to the Washoe County Commissioners, Herman asserted that the expansion would result in violation of County ordinances requiring that mineral resource extractions operations be screened and/or buffered from nearby incompatible land uses and not be visible from highways. (Comments at 1.) He questioned whether the expansion was consistent with a pending rezoning of the area from general rural to medium density suburban. He urged the commissioners to take action to review Rocky Ridge's pending permit. He cited concerns about possible violations of county ordinances concerning scarring, air quality, volume of truck traffic, and spillage of rocks from trucks. (Comments at 2-3.)

Herman included a petition opposing the expansion signed by approximately 240 persons (Comments Encl. 3), as well as a photograph showing access to Stormy Canyon nearly blocked by large stones. (Comments Encl. 2.)

On May 20, 1997, the Nevada Division of Environmental Protection office advised BLM that Rocky Ridge would require a storm water permit from the Bureau of Water Pollution Control of the Division of Environmental Protection.

On May 21, 1997, BLM received a copy of a letter to the Washoe County Community Development Review from the District Health Department, Air Quality Management Division, "strongly recommend[ing]" that the County oppose the expansion proposal. The letter cited "ongoing compliance problems with the facility"; complaints from neighbors concerning dust from the plant, presenting "both a public nuisance to residents and a potential health risk in the area"; and investigations that showed insufficient water to control dust emissions. The letter referred to the fact that "written warnings and citations have been issued" and stated that "[p]roblems have been caused both by intentional reductions in water used to control dust as well as the operation of broken equipment." The letter also referred to the fact that, although the Rocky Ridge facility was built when the local population was much smaller, the increased population in the immediate area of the facility made a "protracted dispute between the area residents and the plant" inevitable. In view of "problems elsewhere in the county where heavy industrial operations are allowed in close proximity to residences," the letter concluded, it "is not desirable to repeat those problems in this case."

The SSCAB met on May 22, 1997, to review presentations concerning the proposed expansion by both Herman and Rocky Ridge. On May 23, 1997, the SSCAB requested that BLM delay making its decision until after further public discussion, and after the Rocky Ridge site could be toured.

Also on May 23, 1997, the Washoe County Department of Community Development filed its comments. It noted that a special use permit was issued by the County in 1988 for the Rocky Ridge aggregate operation, and that the permit was presently valid and covered future aggregate operations located on the portion of public lands presently being considered by BLM for expansion. Noting that the affected area was "definitely part of the visual back drop to a growing Spanish Springs community," such that FONSI Stipulation No. 1 (preventing mining or surface disturbing activities south of the Stormy Canyon drainage and forbidding the restriction, alteration, or modification of public access through the portion of Stormy Canyon within the contract area) was important.

Several parties who use products produced at the mine wrote BLM to state that the aggregate operation should remain viable.

On June 11, 1997, BLM staff attended another meeting of the SSCAB to discuss the impacts associated with the proposal. On June 30, 1997, the SSCAB filed a letter with BLM stating as follows:

During the regular meeting of the [SSCAB] held June 11, 1997, extensive testimony was heard from the applicant, representatives of Washoe County and the [BLM] and statements from

local citizens. As a result, the SSCAB took action to recommend approval of the expansion application with the following stipulations:

- Washoe County continue to observe the bonds to insure that the [moneys] are available for reclamation.
- Recommend to the [BLM] that the application be resubmitted in five years.

BLM issued its RD and FONSI on July 14, 1997. BLM decided that the implementation of "a modified proposed action together with the monitoring and mitigation measures" set out in the RD "will not cause unnecessary or undue degradation of the subject public lands." (RD at 1; see RD at 2.) BLM ruled that mining is an appropriate land use that is in conformance with the Lahotan Resource Management Plan and that additional sales of material from the site were under the authority of an existing Washoe County Special Use Permit. BLM noted that the mining area has produced an excellent product for local aggregate users, and that the demand for quality material in the area was expected to remain high. (RD at 2-3.) BLM found that long-term reclamation would result in conditions which support postmining uses of public lands, and that the slope reduction required in the approved mining and reclamation plan would provide for greater reclamation success than what was provided for in the previous mining plan.

Most significantly, the proposal was modified to exclude lands south of Stormy Canyon. (RD at 1, 3.) BLM also committed to inspecting the mineral material sale area a minimum of two times per year to monitor adherence to the proposed action and stipulations. BLM directed the sale proponent to install light and noise barriers in the form of earthen berms, to construct a fence along the north side of Stormy Canyon to preclude public access in the active mineral material sale area, and to conduct testing of rock painting/staining products to determine their effectiveness in mitigating visual impacts on slopes planned to exceed 3h:1v, beginning during the first year of the sale contract.

BLM expressly rejected the alternative of mining material from the back side of the hill, noting that an additional 30 acres of disturbance would be required to build a new haul road and start a new operation, without substantial short-term improvement in the impact to visual resources. (RD at 2.)

Notice of the RD was published in the Federal Register on July 18, 1997 (62 Fed. Reg. 38576 (July 18, 1997)), and a copy was sent directly to Herman, who received it on July 15, 1997. He filed a timely notice of appeal with BLM on August 14, 1997. ^{8/} On September 10, 1997, he filed a

^{8/} Rocky Ridge filed a letter on May 24, 1999, indicating that Herman's appeal was "procedurally defective" and reserving "the right to argue that the appeal was not timely filed." Those arguments are rejected.

combined statement of reasons (SOR)/request for stay of the effect of BLM's decision. The SOR argues that there would be a significant increase in scarring of the hillside; that BLM officials are ignoring the BLM VRM class objectives; that the BLM's EA was biased because it was paid for by Rocky Ridge; that funding for reclamation was inadequate and was not clearly stated in the EA of the RD; that increasing the area available to Rocky Ridge decreased the open space and recreational lands available to all citizens; that the hours of operations should be limited; that nothing required the slope to be limited to no greater than 3h:1v; and that the County Health Department opposed expansion as a public nuisance and potential health risk. 9/

9/ No response to the request for stay was received, and it was granted by order dated Oct. 17, 1997. On Nov. 14, 1997, BLM wrote to this Board as follows:

"We are in receipt of the Order dated October 17, 1997, granting the Petition for Stay for Mineral Material Sale N-60222. We fully intend to comply with this Order, and set forth our interpretation of it as follows.

"BLM's Record, of Decision was signed on July 14, 1997 and a Notice of Availability of this decision was published in the Federal Register on July 18, 1997. The decision included information regarding how to appeal and how to petition for a stay, stating in part: 'If you wish to file a petition pursuant to regulation 43 CFR 4.21 for a stay of the effectiveness of this decision during the time that your appeal is being reviewed by the Board, the petition for stay must accompany your notice of appeal.' Mr. Herman filed a notice of appeal on August 14, 1997, within the 30 day appeal period prescribed in 43 CFR 4.411. Mr. Herman's request for a Stay was filed on September 8, 1997, fifty two days after our decision was noticed in the Federal Register and twenty five days after his notice of appeal was filed.

"Title 43 CFR 4.21(a)(2) states: "A decision will become effective on the day after the expiration of the time during which a person adversely affected may file a notice of appeal unless a petition for a stay pending appeal is filed together with a timely notice of appeal." Mr. Herman did not file a request for a stay within the 30 day appeal period. Accordingly, BLM's decision became effective on July 18, 1997. In accordance with this decision, BLM held a competitive sale on September 17, 1997, and executed a contract on September 29, 1997, which provided for the sale of 3,000,000 tons of material over a three year period.

"BLM's interpretation of the stay granted by IBLA is that it prevents BLM from holding any additional sales, or executing any additional contracts, which would pertain to the remaining 7,000,000 tons of material approved for sale by BLM's decision of July 14, 1997. However, because the September 29, 1997 contract was executed while the decision was effective, BLM does not consider that contract to be affected by the stay." (BLM Letter dated Nov. 14, 1997, at 1-2.) As we affirm BLM's decision, the status of the stay of the effectiveness of that decision is now moot, and we accordingly do not consider whether BLM's interpretation was correct.

BLM issued a sales contract to Rocky Ridge, Inc., on September 29, 1997.

On October 20, 1997, Rocky Ridge filed an answer, responding to statements made by Herman both to this Board, to BLM, and to the Washoe County Commissioners. Herman had argued that BLM's decision would lead to a significant increase in scarring of the hillside (approximately a 71-percent increase) and that the scarring of BLM land is viewable from a majority of the Spanish Springs Valley. (SOR at 1.) Rocky Ridge countered that, although there will be some new disturbance over the 10-year period affected by BLM's decision, there should be no additional new areas open once the mining gets to the top of the mountain, which is anticipated to be in the next 3 to 5 years. It emphasized that the Spanish Springs Valley Citizens Advisory Board (comprised of local citizens) approved the sale with the mitigation measures imposed in the RD, adding that it is in compliance with all Washoe County requirements, which have been in place since the beginning of the mining activity, and that the Spanish Springs Specific Plan includes Rocky Ridge as a continuing mining operation. (Answer at 4.)

Rocky Ridge disputed Herman's assertion that Pyramid Highway has been designated a scenic corridor and countered his assertion that BLM ignored its visual resource class objectives by pointing out that those objectives will be met at the cessation of mining. Moreover, it points out that, since this is an ongoing mine, if mining were halted now, those objectives could not be met. Concerning Herman's allegation that BLM's EA was biased, it noted that the EA was performed by a licensed certified technical engineering company, and that Rocky Ridge had absolutely no control over the findings and facts involved.

Rocky Ridge effectively countered Herman's assertions that funding for reclamation was inadequate and that the amount or percentage of the contract is not clearly stated in the EA or RD:

A bond in an amount equal to 20% of the total contract purchase price is required to be posted. At the present time a bond in the amount of \$270,000 is being held by [BLM]. Washoe [C]ounty has agreed that the amount of that bond is adequate and is not requiring any additional bonding.

Rocky Ridge noted later in its answer that the "reclamation bonding is covered by federal regulations and Washoe County has agreed that the amount of the bond required by those regulations meets the County requirements."

Rocky Ridge also pointed out that Herman's assertion that the increase of acreage to Rocky Ridge would decrease the open space and recreational land available to all citizens is incorrect, in that there have, since the beginning of the operation, been approximately 160 acres in this mineral material sale and that acreage has not increased, adding that the areas included in this area are steeper than a 3h:1v slope and are at the top of a mountain and not accessible by most people for recreational purposes.

Rocky Ridge noted that its Washoe County Special Use Permit has always limited the crusher operation to between 6 a.m. and midnight, that the plant is between 1 and 2 miles from the nearest residence, and that there is a berm between the mining area and any residence. It asserted that it meets all of Washoe County ordinances on noise emission. It also pointed out that the EA does contain a mining plan that for the next 10 years limits the slope to no greater than 3h:1v.

Rocky Ridge conceded that the letter of the Washoe County District Health Department Air Quality Management Division, cited by Herman, had "raised a lot of concern," but noted that it had not had "any more air quality problems than any other gravel pit in the area," a fact evidently acknowledged publicly by officials of that agency. Rocky Ridge admitted that its pit had received one warning when there was a breakdown in its water supply but continued to produce material to meet the contractual obligations of its customers. It noted that the agency official's letter "appears to be more his personal opinion on planning rather than a real concern for dust emission."

Herman also cited the November 1995 Spanish Springs area plan, which acknowledges that "increased residential development is often incompatible with development of mineral resources" and provides that "[e]xisting mineral operations near developing areas must, therefore, be regulated to preserve water and air quality and to ensure compatibility between the operations and the surrounding residential areas." The plan also provides, "The Washoe County Department of Development Review will, as appropriate, attach conditions to mineral resource extraction operation projects to enforce this policy." Rocky Ridge responded that its facility already has a special use permit with 24 conditions attached to it to mitigate and protect the surrounding properties.

Herman complained about the potential for dust, noting his opinion that dust from disturbed or sparsely vegetated land during periods of high winds is unacceptable. Rocky Ridge responded as follows:

We live and work in the desert and as such must all be aware of dust from sparsely vegetated land from high wind. The mine slope has very little dust as it is rock. The permit from the Washoe County Health Department requires the use of spray bars at transfer points within the plant, water truck spraying of those areas not paved, and the spraying of all trucks leaving the facility. In reality there is more dust kicked up from vehicles traveling on all the county roads that are not paved than from our gravel pit.

Concerning Herman's objections to truck traffic at the Rocky Ridge facility, including his objection that it was responsible for broken wind-shields, Rocky Ridge responded that it is

in compliance with our Special Use Permit and Health Department permit that requires all trucks to be sprayed by a water bar

prior to leaving the pit. * * * We conducted a tour of the pit for the members of the [SSCAB] with [BLM] the County Commissioner for this area, and Ron Kilgore of the Department of Development Review, and had them look at our 1-1/2 miles of paved entrance road. There were no rocks on the road, and if there were a spillage problem from this facility, our road would have been covered with rock.

Herman had complained that the current approved level of truck traffic is excessive in view of increased traffic in the area, to which Rocky Ridge responded:

The Nevada Department of Highways required a turn lane be installed at the intersection of our haul road and Pyramid Highway. At the present time the area north of our haul road has sparse population and is general rural or has only 1 residence per 10 acres. There have been no traffic incidents at that corner.

Rocky Ridge responded as follows to Herman's concerns about compliance with BLM VRM standards:

[BLM] has agreed to have a review with the [SSCAB] in 5 years per their request regarding how Rocky Ridge, Inc. is complying with the mining plan, and is requiring that we do some experimenting with rock painting under their supervision. This rock painting is to be performed sometime within the next 12 months on areas where the mining is completed and the finished slope will be more than [3h:1v], or areas where there is nothing to hold the growth medium to see how this process will affect the looks of the mined area. * * * The type of mining that is ongoing in this pit is the face of the mountain and when the mountain is gone the visible scar[r]ing will be gone. There will be reclamation of any land concurrently with the mining when that area is mined out. * * * Without the ability to widen the existing disturbed area, the mining would leave that hill a [sheer] cliff onto which there could be no reclamation nor be of any use to the citizens for recreational purposes in the future as it would be too steep.

[1] BLM is authorized by section 1 of the Act of July 31, 1947, as amended, 30 U.S.C. § 601 (1994), to dispose of mineral materials including common varieties of sand and gravel (among other materials) in the public lands of the United States, if the disposal of these materials is not expressly prohibited by the laws of the United States and would not be detrimental to the public interest. 43 C.F.R. § 3600.0-3(a)(1). Approval or denial of an application for a mineral materials sale rests within BLM's discretionary authority. 43 C.F.R. § 3610.1-1; Jenott Mining Corp., 134 IBLA 191, 194 (1995); Glenn B. Sheldon, 128 IBLA 188, 191 (1994). We find that BLM's record shows that its decision would not be detrimental to the public interest, considered as a whole, and that appellant has not shown that BLM abused its authority in issuing it.

BLM's decision is not without adverse impact on the surrounding community. A gravel pit in any developed area will necessarily have some impact on that area. Nevertheless, the existence of adverse effects may, as here, be outweighed by the benefit a facility provides to the community. BLM's record makes it clear that BLM carefully considered whether granting the permit extension (with the inevitable perpetuation of the negative visual impact to a portion of the surrounding community) in light of the public interest. By involving community leaders, who ultimately agreed with BLM that a scaled-back expansion could be allowed, BLM ensured that its assessment of the "public interest" was well informed.

[2] A BLM decision record approving the issuance of a contract for the sale of sand and gravel from Federal lands and finding no significant impact from that sale (deciding to take action without preparing an EIS) will be affirmed where BLM has taken a hard look at the environmental consequences of the sale in accordance with section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. § 4332(2)(C) (1994), and there is no evidence that BLM failed to consider adequately a substantial environmental problem of material significance. Robert W. Hall, 149 IBLA 130, 138 (1999). We find that BLM has taken a "hard look" at the potential impacts of the proposed action on visual resources and that Herman has failed to establish a NEPA violation in this case.

Again, there is no doubt that there will be some negative environmental consequences from continuing the mine operation by allowing the mining of additional sand and gravel. Those consequences were fully and frankly disclosed to all concerned parties, including the public in the surrounding community. BLM's analysis was obviously thorough; BLM plainly took a "hard look" at those consequences and concluded that they were tolerable in light of the economic benefit of providing a reliable source of high quality building material to an expanding community.

To the extent not specifically addressed herein, appellant's objections have been considered and rejected.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the decision appealed from is affirmed.

David L. Hughes
Administrative Judge

I concur:

C. Randall Grant, Jr.
Administrative Judge